
Exhibit “J”

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

MICHAEL T. DREHER,
Individually and on
behalf of a class
similarly situated Civil No.
persons, 3:11cv00624 (JAG)

Plaintiff,

vs.

EXPERIAN INFORMATION
SOLUTIONS, INC.,
CARDWORKS, INC. and
CARDWORKS SERVICING, LLC,

Defendants.

VIDEOTAPED DEPOSITION OF JAMES KILKA
FRIDAY, AUGUST 24, 2012
PITTSBURGH, PENNSYLVANIA
2:39 p.m. - 4:03 p.m.

REPORTER:
Ann Medis



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2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 Richmond Division
4
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6 MICHAEL T. DREHER,
7 Individually and on
8 behalf of a class
9 similarly situated Civil No.
10 persons, 3:11cv00624 (JAG)

11 Plaintiff,

12 vs.

13 EXPERIAN INFORMATION
14 SOLUTIONS, INC.,
15 CARDWORKS, INC. and
16 CARDWORKS SERVICING, LLC,
17
18 Defendants.
19
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22
23
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26 VIDEOTAPED DEPOSITION OF JAMES KILKA,
27 a witness herein, called for examination by Plaintiff,
28 by and before Ann Medis, Registered Professional
29 Reporter and Notary Public in and for the Commonwealth
30 of Pennsylvania, at the offices of Jones Day, One
31 Mellon Bank Center, 31st Floor, Pittsburgh,
32 Pennsylvania 15219, on Friday, August 24, 2012, at
33 commencing 2:39 p.m.

1 APPEARANCES:

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Also Present:

STEVE SIMAK, Videographer

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1 (Kilka Exhibits 1-8 were marked.)

2 THE VIDEOGRAPHER: My name is Steve
3 Simak of Maxene Weinberg Agency. The date today
4 is August 24, 2012, and the time is 2:39:06 in the
5 afternoon here Eastern Standard Time. This
6 deposition is being held in the office of Jones
7 Day located at 500 Grant Street, Suite 4500,
8 Pittsburgh, Pennsylvania 15219.

9 The caption of this case is Michael T. Dreher
10 versus Experian Information Solutions,
11 Incorporated, et al., in the United States
12 District Court for the Eastern District of
13 Virginia, the Richmond Division. The name of the
14 witness is James Kilka.

15 At this time the attorneys will identify
16 themselves and the parties they represent after
17 which our court reporter, Ann Medis, of Maxene
18 Weinberg Agency, will swear in the witness, and we
19 can proceed.

20 MR. BENNETT: For the plaintiff, I'm on
21 the telephone, this is Leonard Bennett. My
22 co-counsel up in Fairfax, Virginia, Ms. Kristi
23 Kelly, is also on the phone in the background.

24 MR. KATZ: For Experian Information
25 Solutions, this is Ben Katz appearing in person.

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1 MR. CLARK: Joseph Clark, counsel for
2 Experian, appearing by way of telephone.

3 MR. OSTROFF: Ethan Ostroff on behalf of
4 CardWorks Servicing LLP and CardWorks, Inc.,
5 Troutman Sanders, appearing by phone.

6 JAMES KILKA,
7 having been first duly sworn, was examined
8 and testified as follows:

9 EXAMINATION

10 BY MR. BENNETT:

11 Q. Sir, will you please state your full
12 name for the record court reporter.

13 A. James Kilka.

14 Q. And by whom are you employed?

15 A. Experian Information Solutions.

16 Q. Where is your office or from where do
17 you work?

18 A. Cranberry Township, Pennsylvania.

19 Q. And do you work -- do you telecommute,
20 work out of your home, or do you have an actual
21 office away from home?

22 A. Telecommute. I have a home office.

23 Q. And how long have you worked for
24 Experian?

25 A. Seven years in October. In October it

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1 will be seven years.

2 Q. How long have you been able to
3 telecommute?

4 A. The last four.

5 Q. Prior to that, where did you work?

6 A. Parsippany, New Jersey.

7 Q. And what precipitated the change in
8 your, I guess I'll just say, work structure or
9 work location structure?

10 A. I would call it a promotion and then a
11 relocation.

12 Q. What's your current job position with
13 Experian?

14 A. I'm an account executive for our
15 information services group.

16 Q. And what was your job four years ago?

17 A. I was -- the title then was called sales
18 support representative, and it's an equivalent to
19 a sales associate today.

20 Q. All right. And I'm not going to get --
21 we're going -- we're going to move through this
22 deposition much more quickly than I usually do.
23 So I don't need tons of detail, but I've never met
24 you before; right?

25 A. Correct.

1 Q. Have you ever had your deposition taken
2 before?

3 A. No.

4 Q. Can you explain to me generally what you
5 do for Experian, what your job entails?

6 A. Sure. I'm a -- essentially I manage a
7 book of business, a book of accounts, and my job
8 is to manage the existing business and to, you
9 know, upsell or cross-sell or sell new business
10 into those places I support and also look for new
11 business as well outside that book of business.

12 Q. And when you say look for a book of
13 business, what are the customers that you would be
14 focusing on?

15 A. Predominantly banks. There are a few
16 exceptions, a few finance companies.

17 Q. Generally where does Experian make its
18 money or at least the money from the segments that
19 you're responsible for selling to? How does it
20 make its money?

21 A. The core of the business would be the
22 credit report data.

23 Q. Experian sells credit reports to its
24 subscribers in various forms; correct?

25 A. Yeah. That would be the meat of what we

1 do.

2 Q. And it sells other products, like it
3 might sell different statistical or
4 scoring-related products; right?

5 A. Yeah. We call that like decision
6 analytics solutions.

7 Q. And would that be -- when you say upsell
8 or that type of thing, would that be the kind of
9 additional product line you would offer your
10 customers?

11 A. That's a good -- yeah. That would be an
12 example of it, yes. It could be -- yeah. That's
13 a good example.

14 Q. But you do not focus on I think it's
15 called consumer direct or the products that are
16 sold to the consumers whose data actually make up
17 a credit report; right?

18 A. Consumer direct is solutions that we --
19 Experian sells directly to the consumer. So it
20 could be versions -- like a version of their
21 credit report for the consumer to read. It's
22 different than what I sell. That's a different
23 division of Experian.

24 Q. Okay. And then your -- even four years
25 ago when you were in New Jersey, you were in what

1 is now a sales associate position. The focus of
2 your job would have been the same basic focus as
3 it is today, it's just different tasks, but
4 selling to banks and other subscribers credit
5 reporting data and related products; right?

6 A. The sales associate position was more of
7 a support role than the role I'm in today and had
8 some different focus around training and some
9 light cross-selling, trying to secure people to
10 report the data to Experian. The role I have
11 today is more about nurturing relationships to
12 grow, you know, the customer spend and ensure that
13 they're happy and that they're -- you know, that
14 things are going well.

15 Q. Okay. Now, it should be in front of
16 you. There should be a stack of exhibits, and I
17 don't know if they're -- if it's just all in one
18 big stack or if they've been separated at all.

19 A. I've got a big stack of paper, and some
20 of them are stapled, and one big stack in a binder
21 clip.

22 Q. Okay. All right. Well, the big stack
23 in the binder clip I'm sure, I'm guessing, is the
24 one I'd like to start with. And I think it should
25 say Exhibit 8.

1 A. It does.

2 Q. All right. All right. Always good to
3 have people that work for you that do their job
4 really well.

5 So Exhibit 8, your Exhibit 8 I'm certain
6 looks a lot like mine. It's a stack of emails
7 that Experian in this case has provided; right?

8 A. Yeah, fanning through, yes.

9 Q. All right. The way -- if you look at
10 the bottom right, the way that lawyers and law
11 firms deal with papers in litigation is when we
12 get documents, before we turn them over to the
13 other side, we label them so that they can be
14 referenced and they can be tracked and they can be
15 sorted. We call the numbering, if you look at the
16 bottom right, we call -- where it says EXPDREH and
17 then has a number --

18 A. Yeah.

19 Q. -- do you see that? That's a Bates
20 number just for your knowledge. If anyone was
21 looking at this, they would -- EXP typically would
22 mean that it was Experian produced that these.
23 Experian is using DREH probably because our
24 client, the one that's suing your client for
25 ridiculous amounts of money or whatever, any

1 consumer that might be suing, in this case the
2 plaintiff is named Dreher, and that's in there.
3 And so that's where that -- so I would refer to
4 this typically -- if I was looking at the bottom
5 right, I would refer to this as Bates number 143.

6 A. Okay.

7 Q. All right. And then the next pages
8 typically are in order, and in this case, they
9 are. These documents were -- and Ben and Joe can
10 interrupt if I'm misstating the record, but these
11 documents, I believe, were produced by Experian as
12 emails that they gathered in response to requests
13 that we made. Do you understand that?

14 A. Yes.

15 Q. And the emails, unfortunately for you,
16 heavily feature your communications with various
17 individuals from CardWorks. Do you see that?

18 A. Yes.

19 Q. Have you had an opportunity, by the way,
20 to go back and -- I don't mean study them like
21 this is your final exam you need to pass, but
22 you're generally familiar with the subjects and
23 contents of your emails related to the CardWorks
24 matter?

25 A. I had an opportunity to review them.

1 Q. Okay. Now, first of all, what is
2 CardWorks Servicing as you understand it?

3 A. That particular part of their business
4 is servicing -- they have outside clients that
5 they service their portfolios of accounts.

6 Q. Okay. And in this case, is the first --
7 I think these emails are supposed to be in
8 roughly, if not exactly, chronological order. So
9 this one starts September 2010.

10 Prior to this, the events that are in these
11 emails and that we're to talk about, had you
12 already sold some products or services to
13 CardWorks?

14 A. I had not sold to them. One of my
15 colleagues had sold them business credit solutions
16 at one point. But, no, I hadn't had any
17 particular sales wins of my own.

18 Q. So for you they were a new customer?

19 A. Right.

20 Q. And starting with the first of these
21 emails -- and some of them are going to be -- I'm
22 just going to roll right through them. And I
23 apologize. We just wanted to have a complete set
24 for the integrity of the exhibit.

25 A. Yeah.

1 Q. But the top part, the top document, 143
2 at the bottom, you were contacted by the woman
3 named Maria Costa, director of credit at CardWorks
4 Servicing; correct?

5 A. Correct.

6 Q. And had you ever spoken with Maria Costa
7 before this contact?

8 A. Yes.

9 Q. And how did that come about? How did
10 that business communication occur?

11 A. I couldn't give you specifics just
12 because I don't recall, but it would have been
13 probably around trying to make new contacts at
14 CardWorks to sell to them. So I probably came
15 across her name at some point, and that would have
16 been my past contact with her.

17 Q. All right. And then she said she needs
18 to be able to pull Bulls Eyes reports on the
19 following subscriber code. Do you see that?

20 A. Yeah.

21 Q. So you received this email. And now I'm
22 on -- the same chain is in the next several pages.

23 A. Right.

24 Q. And you -- so the very next page has
25 your response. It says, "I am sorry I missed your

1 call today." Do you see that email?

2 A. Yeah.

3 Q. It says, "I am sending your request for
4 help to out" -- you mean our; right?

5 A. Yeah.

6 Q. -- "our in-house E-OSCAR experts."

7 A. Correct.

8 Q. Right?

9 A. Yeah.

10 Q. What does that mean?

11 A. E-OSCAR is a -- which you probably know,
12 but is an outside company, but we have people in
13 Experian that we go to whenever we have or need
14 support around any sort of E-OSCAR issues. So
15 they -- if somebody would go to -- if we needed
16 help to get a subcode set up so that their
17 disputes would come through electronically through
18 E-OSCAR as opposed to the old -- I think they
19 called them CDV forms. It's a department of I
20 don't know how many people that we can go to for
21 help with this kind of stuff.

22 Q. This is more footnote. It's not
23 according to the case. You know that Experian,
24 Equifax and TransUnion and Innovis are each
25 one-quarter owners in Online Data Exchange, the

1 for-profit data entity that runs E-OSCAR. So I
2 didn't know if you knew that, but...

3 A. No, I didn't know that. I didn't know
4 that.

5 Q. They make money selling ACDs. Whenever
6 they send ACDs to furnishers, furnishers pay
7 Online Data Exchange money which is an actual
8 profit center for each of the bureaus.

9 A. I was not aware.

10 Q. Joe Clark would have never let that
11 evidence come out, but fortunately Equifax's
12 lawyers are nice. So in this -- the actual point
13 of the deposition and this particular email, you
14 would have contacted a particular person at
15 E-OSCAR. Do you recall who specifically you spoke
16 with?

17 A. I don't. We have a general mailbox for
18 that group though.

19 Q. Okay. And do you know what a Bulls Eye
20 is, by the way?

21 A. I do.

22 Q. What is a Bulls Eye?

23 A. A Bulls Eye is a product that we offer
24 at no cost to our customers to allow them to see
25 what a person's trade line looks like, a

1 consumer's trade line looks like at that exact
2 moment in time.

3 Q. Okay. And then the next email says
4 that -- I guess it asks you if Experian offers
5 this service. Of course, all three bureaus offer
6 the service; right? I mean at least you know
7 Experian offers it?

8 A. Right. I know Experian offers it.

9 Q. So now I'm skipping ahead to -- at the
10 bottom it should say 163. It's that email chain,
11 the top page which is 163.

12 A. 163 you said?

13 Q. Yes.

14 A. Okay.

15 Q. Just several pages in.

16 A. Yeah.

17 Q. This is a continuation of the same
18 chain.

19 A. Um-hum.

20 Q. And the second page, which is actually
21 164, says -- there's an email at 8:29 a.m. right
22 in the middle of the page when you say you're
23 going to work on it in the morning. And then
24 Maria Costa on the response to that says, "Can you
25 tell me what functions" -- I'm sorry.

1 You respond and you say, "Maria can you tell
2 me what functions CardWorks will perform for
3 Advanta? I'm getting help from our membership
4 area, and I want to be sure that we set you guys
5 up right. Will you be reporting data on their
6 behalf as part of the services you provide?"

7 That was your email to CardWorks; right?

8 A. Yep.

9 Q. Let me step aside, see if I can shorten
10 this. What is your understanding of what this
11 litigation is about, if you have one? Why are we
12 suing your employer?

13 A. Because -- well, I don't know. Maybe it
14 would be best if you tell me.

15 Q. We're alleging that the Fair Credit
16 Reporting Act requires a consumer reporting agency
17 to -- when a consumer asks for a copy of their
18 credit report, requires the reporting agency to
19 disclose to the consumer the source of the trade
20 line. And in this instance we're alleging that
21 it's Experian's policy, not a policy that you
22 deviated from, but one that's uniform to allow the
23 subscriber to determine the name or the identity
24 of the trade line that is disclosed to consumers.

25 So in this case, instead of saying CardWorks,

1 disclosing CardWorks as the source of the credit
2 reporting, Experian disclosed Advanta, either
3 Advanta Bank or Advanta Credit Card as the source
4 of the reporting.

5 Is that in any way consistent with any
6 understanding you have of the subject of this
7 lawsuit?

8 A. Yes.

9 Q. And these emails, we can go through
10 them, but these emails are going to show us that
11 you worked with CardWorks to -- first to open new
12 subscriber codes in CardWorks' own name; right?
13 I'm not saying the credit reporting in CardWorks'
14 name, but the subscriber accounts were actually
15 CardWorks subscriber accounts; correct?

16 A. Just say that one more time, that last
17 part.

18 Q. Sure. Experian entered into a contract
19 with CardWorks by which CardWorks was provided its
20 own subscriber code or codes?

21 A. That's correct.

22 Q. The credit reporting that then CardWorks
23 did subsequent to that contract was made on the
24 CardWorks subscriber codes, not on the old Advanta
25 Bank subscriber code; correct?

1 A. Yes.

2 Q. And in order for that to occur,
3 CardWorks had to enter into its own contract with
4 Experian, its own subscriber agreement?

5 A. If what you're asking is are they a
6 client, yes. I think -- I'm not really sure where
7 you're going with this.

8 Q. Well, actually the remarkable thing,
9 James, a lot of these depositions, I have to --
10 you know, I know what -- the one I just finished,
11 I know where Ms. Hughes is going to go, and I got
12 to keep her from going there.

13 A. Okay.

14 Q. This is -- your deposition in this case
15 is not -- I don't think anybody here will think it
16 was controversial. And I'm not intending to use
17 it to learn more about Experian's business,
18 particularly in the late day and late part of the
19 week. I'm just sitting here wondering why I
20 scheduled a deposition instead of just getting a
21 stipulation from Joe to this, but I'm here now.

22 So we have in the communications with
23 CardWorks, CardWorks and Experian communicated as
24 to how the trade lines that CardWorks was
25 reporting or was to report would be displayed to

1 consumers; correct?

2 A. Are you speaking specifically about the
3 Advanta trade lines or just CardWorks' trade lines
4 in general?

5 Q. Well, CardWorks' trade lines in general
6 first, and then we'll speak about Advanta.

7 A. Yes. We would have worked with
8 CardWorks to determine what name would appear to
9 consumers and creditors on that subject.

10 Q. All right. Well, let me take a
11 hypothetical example here. What if Bank of
12 America was your subscriber. Certainly if you
13 brought Bank of America in as a strategic
14 customer, that would be great I'm sure. But
15 assume Bank of America was your client, Experian's
16 customer. And Bank of America said to Experian we
17 want all of our Bank of America credit cards to
18 display as Chase Bank credit card.

19 What procedure is in place, to your
20 knowledge, at Experian to determine whether that
21 would be permitted, whether Bank of America's
22 statement that it wanted its credit cards reported
23 as Chase Bank credit card would be allowed?

24 A. I don't know what procedure is
25 documented. There may be a procedure documented.

1 If I were to receive that request I would question
2 Bank of America as to why they'd want to do that
3 and let them know that the name is supposed to be
4 reflective of who owns the trade line. And if
5 they persisted and pushed that there was some
6 grand reason or good reason why, then I would have
7 escalated it to either -- well, I may have gone to
8 a few different places to make sure I find the
9 right answer. But it could have been compliance
10 or membership, one of those types of areas. That
11 kind of stuff isn't something that is in my area
12 of expertise. That's why we have support areas to
13 help us with those things.

14 Q. Okay. All right. So I want to go back
15 to Exhibit 8. And now I'm looking at page 163.
16 Do you have it in front of you?

17 A. I do.

18 Q. All right. The email at the time is
19 your response to Maria's email in this chain. And
20 can you read the paragraph for me?

21 A. Sure. "Since your last client addition,
22 Experian has updated policies around who we allow
23 this sort of access to. We have two agreements
24 attached to this email. One needs to be signed by
25 CardWorks and Advanta, and one needs to be

1 completed by you."

2 Q. And this particular email, I'm sure
3 that I actually have a copy of the document
4 somewhere, but this particular email didn't
5 have -- I don't have the agreement in this
6 exhibit. Can you tell me what those two
7 agreements were, if you recall?

8 A. Yeah. One was a third-party processor
9 application, and the other one was a third-party
10 processor addendum.

11 Q. And what are those documents? What is
12 their purpose?

13 A. The one is -- well, the one -- the
14 application is a brief version of our longer
15 membership application, and the addendum,
16 essentially it's to give permission to somebody
17 like CardWorks to act on behalf of a third
18 party -- I guess CardWorks would be a third
19 party -- but to act on behalf of one of our
20 clients to service their accounts or to perform
21 some function like that.

22 Q. Okay. If I continue into the email
23 stack, I'm looking now at 189 on the bottom. 169.
24 I'm sorry. And you have 170 and then you have
25 151.

1 A. They're it looks like meeting invites.

2 Q. Yes.

3 A. Okay.

4 Q. Can you tell me what this was about?

5 A. I don't recall the meeting. I mean, I
6 don't -- this is a couple years back. I don't
7 recall the specifics of what this meeting -- what
8 we talked about. Obviously there's the heading,
9 but I don't know -- outside of that, I couldn't
10 tell you.

11 Q. But it wouldn't have been an in-person
12 meeting; right? It would have been maybe a
13 conference call?

14 A. Yeah. This would have been a conference
15 call. I was out in Pittsburgh at this point. I
16 didn't go out to CardWorks in New York.

17 Q. Have you ever been to CardWorks in New
18 York?

19 A. Not in New York, no.

20 Q. They have an office in Pittsburgh that
21 does collection work; right?

22 A. Yes.

23 Q. Have you been to that office?

24 A. Yes.

25 Q. When was the last time you were there?

1 A. Earlier this week.

2 Q. For what? For what reason?

3 A. To meet with Carson Smithfield which
4 was -- which is a third-party collections company
5 that used to be part of CardWorks Servicing.
6 They -- if I understand it right, they're now a
7 separate company.

8 Q. But it was not related to this case at
9 all?

10 A. No, no, not at all. This was a sales
11 call.

12 Q. Okay. Then continuing in the email
13 stack, and I'm skipping ahead to 222.

14 A. Give me one second to get there.

15 Q. Sure.

16 A. Okay. I have it in front of me.

17 Q. All right. So I'm now -- if you look at
18 222 and 223, and actually you can push both --
19 discard those and move to 239.

20 A. Okay.

21 Q. Same email chain as immediately behind
22 it.

23 A. Okay.

24 Q. All right. So if you look at -- two
25 pages in is 241 --

1 A. Okay.

2 Q. -- in this chain. And it begins -- it's
3 an email from Brian to a woman named Mabel. Have
4 you ever spoken to someone named Mabel --

5 A. No.

6 Q. -- associated with CardWorks? No?

7 A. No, I don't believe so.

8 Q. She says, "I had sent Mike N" -- and by
9 the way, have you ever spoken to Mike N for
10 CardWorks?

11 A. I don't believe so. It doesn't sound
12 familiar.

13 Q. I think we took his deposition. He was
14 a third-party consultant that CardWorks used. But
15 he says, Mabel, I had sent Mike N a letter last
16 week which contained the information that TU had
17 requested from us on the background of the ABC --
18 are you aware that ABC stood for Advanta Bank
19 Corporation?

20 A. I am, yes.

21 Q. -- on the background of the Advanta Bank
22 Corporation dissolution and why CWS, CardWorks
23 Servicing, needs access to ABC's bureaus/trade
24 lines and that the FDIC will not be signing any
25 additional papers with regard to the transfer.

1 The document issued by the FDIC should be
2 sufficient.

3 You were copied or received this forwarded
4 email; right?

5 A. Yeah. I don't recall it, but, I mean, I
6 see it here in this stack, and I see my name on
7 it. So, yeah. I mean, I don't really remember
8 getting it, but I'm sure I did.

9 Q. In this time period or when -- when did
10 you learn -- roughly when did you learn about the
11 basic Advanta history, that is in this email,
12 Advanta Bank Corporation had been dissolved and
13 the FDIC -- or that CWS was trying to get access
14 to ABC's bureaus and trade lines?

15 A. The first time I would have learned
16 about any of this or what happened to Advanta
17 would have been when I was first contacted by
18 CardWorks.

19 Q. Okay. But there was no mystery or
20 CardWorks wasn't hiding the fact that Advanta Bank
21 was gone; right?

22 A. No.

23 Q. So then now I'm at the front page of
24 this email.

25 A. Okay.

1 Q. After you say that you're going to send
2 it out -- by the way, who would you have sent this
3 out to?

4 A. This letter?

5 Q. On page 240 at the bottom, the second
6 page, you tell Maria Costa, "I will try this out.
7 I am on the phone and will be until 4:30. As soon
8 as I'm off, I will send this over."

9 A. I'd only be speculating, but it probably
10 would have been membership or compliance, one of
11 those two areas, because those are two sweet spots
12 for getting this kind of support.

13 Q. Now, I'm looking in the top of this
14 email chain, at the bottom Bates numbered 239.
15 You have a substantive email response that you're
16 sending to Maria?

17 A. Yeah.

18 Q. Can you explain what you were
19 communicating in this email?

20 A. Give me one second just to read through
21 it quickly, and I will answer that. Sure. So
22 what I was telling her is that we want to create
23 new subcode for these trade lines to report under
24 and explaining how we would transfer the accounts
25 that those -- the Advanta accounts onto the new

1 subcode and show them as being properly
2 transferred on the subcode they came from, the old
3 Advanta subcode, and making sure that they, you
4 know, started reporting correctly on the new
5 subcode. That's what this email is about, yeah.

6 Q. And then you say, do you know Gina
7 Bennett? She has been working with Kathy Cosier,
8 C-O-S-I-E-R, at Experian.

9 A. Yes. Yeah. I know Gina, not
10 intimately. You know, I mean, I've spoken to her
11 the phone in the past.

12 Q. Okay. Do you know Kathy?

13 A. Yes.

14 Q. Who is she?

15 A. Kathy works -- well, I think she still
16 works for Experian. I'm not a hundred percent
17 sure. But she at this point was in our data
18 reporting group.

19 Q. Okay. Have you spoken to her about this
20 case at all?

21 A. No. In fact, like I said, I'm not even
22 sure she still works with us.

23 Q. And now I'm moving into the Bates number
24 174.

25 A. Okay.

1 Q. By the way, when you say subcode, is
2 that short for subscriber code?

3 A. Yes. Sorry. Yes.

4 Q. And can you tell me what subscriber code
5 is?

6 A. Yeah. The way I would describe it, it's
7 like a footprint or a fingerprint. Every bank or
8 anybody, any subscriber, anybody who contributes
9 data to Experian has a special subcode just for
10 them and it ties back to them. There's also
11 subcodes for pulling credit reports. And those
12 subcodes, like I said, they're unique to each
13 business, and they will appear on credit reports
14 so you know exactly -- it's kind of like a unique
15 identifier. Is that clear?

16 Q. It is.

17 A. Okay. I wasn't sure.

18 Q. Now, the second page of this email, so
19 now we're at 175, it references or it comes from
20 Experian employee Zoe Zevan, Z-E-V-A-N?

21 A. Yes.

22 Q. Who is Zoe?

23 A. Zoe works in our client -- our sales
24 support area.

25 Q. Okay. She would -- you would handle

1 sort of the macro stuff, and then she would
2 forward correspondence or in this case subscriber
3 code details?

4 A. That group is -- they're an internal
5 resource. And so I would put in a request for the
6 subcode to be created, and she passes that to me.
7 And then you'll see her emails to me with that
8 information. They don't generally -- they're not
9 generally client facing.

10 Q. Okay. Now, at the top of 176, do you
11 see that?

12 A. Okay.

13 Q. You have an email, the second from the
14 top. It says, "Hi, Maria. Any news from your end
15 how to move the trades and how to report them?"
16 What does that mean?

17 A. Allow me a chance to read down the
18 string because I'll probably get some context if I
19 read down. Give me one second, please.

20 So in reading down the string and seeing this
21 part of it, essentially I was trying to schedule a
22 call that would include Brian Bennett and some of
23 the other folks at CardWorks so we could discuss
24 when we were going to move the accounts from one
25 subcode to the next and just those kind of -- the

1 minutia, the nuts and bolts that would be involved
2 to make sure that it's as seamless as possible.

3 Q. Okay. And what do you mean by moving
4 the subcodes, or can you provide some explanation
5 of what that meant?

6 A. Yeah. I shouldn't say -- maybe I
7 misspoke saying moving subcodes. It's really
8 moving the accounts from one subcode to the next.

9 Q. Tell me what that means and generally
10 you're referring to.

11 A. In general terms, it would be if ABC
12 Bank acquired a portfolio of accounts from XYZ
13 Bank, they would need to essentially start
14 reporting those trades under a different subcode.
15 And so we would, like, mark the ones from XYZ, the
16 portfolio exiting, we'd mark those as maybe
17 purchased and transferred or something to indicate
18 that they were transferred.

19 And then the new subcode would show -- you
20 know, start reporting the data, picking up where
21 that one left off. So you want to make those,
22 like, occur in the same month so you don't end up
23 having one trade line appearing twice, you know,
24 the same data appearing twice on the credit
25 report.

1 Q. Okay. So the example I gave -- let's
2 assume Bank of America had credit cards that were
3 Bank of America credit cards that had been
4 reporting these credit cards and all of a sudden
5 Bank of America got out of the credit card
6 business and sold all those accounts to Chase
7 Bank.

8 A. Right.

9 Q. What would the process, the proper
10 process be to Experian following Experian's
11 procedures for handling that change?

12 A. Right, so at a high level, because this
13 isn't something that I do, right -- this would be
14 handled by our data reps -- but at a high level,
15 as I understand it, they would -- we'd coordinate
16 with both banks, and we would schedule calls and
17 essentially coordinate the transfer, right. We
18 would have whether it was a new subcode created to
19 handle just that portfolio, maybe to keep them
20 separated, or maybe they'd be integrated into
21 other Chase accounts, but one way or the other, we
22 would close and mark transferred all the Chase
23 trade lines.

24 And then on Bank of America these trades
25 would then become brand new trades, and they would

1 say, like, that this was acquired or transferred
2 from, and it would kind of give some indication of
3 the history. And this way, again, so that it kind
4 of maintains the full history, the true history of
5 the trade line. That's how I understand it.

6 Q. Now, I'm skipping ahead to -- at the
7 bottom it says 243, which is an email from Brian
8 Bennett to you, but it also has a letter from
9 CardWorks attached.

10 A. Okay. I'm getting there. Hang on one
11 second. Okay.

12 Q. If you want to take a minute and read
13 the email and read the letter.

14 A. Sure. Give me one second, please.
15 Okay.

16 Q. Now, does this -- you refreshed your
17 recollection at least somewhat?

18 A. Well, so, I don't recall the letter per
19 se, but if I had received this, I probably would
20 not have read through the entire thing and
21 probably would have passed it to Kathy and allowed
22 Kathy to sort of respond to it. Because this is
23 really like in the data reps wheelhouse, like this
24 kind of a notice.

25 Q. Okay. And I want to at least talk about

1 some of the substance of it though. It says, this
2 the letter will formally -- I'm reading the
3 letter this letter will formally document the
4 dissolution of Advanta Bank Corp. and the
5 assumption of all servicing duties for the ABC
6 originated accounts by CardWorks Servicing
7 effective August 1, 2010.

8 That was your understanding when you were
9 going through this September, October 2010
10 subscriber and trade line change; right?

11 A. Yes.

12 Q. And there was no doubt, I mean, or at
13 least you didn't have any belief that Advanta Bank
14 Corp. or Advanta at all would be involved in any
15 of the future credit reporting?

16 A. Correct.

17 Q. Correct?

18 A. Correct.

19 Q. And that -- but this letter says that
20 CardWorks, and I know this is not -- this would
21 have been data's department, but I'm looking at
22 the second paragraph.

23 A. Um-hum.

24 Q. The last sentence says, "We would like
25 for this new code to report on the consumers'

1 trade line as Advanta Credit Cards."

2 A. Okay.

3 Q. And you understood that this was --
4 Experian was being asked by CardWorks to report
5 the former Advanta Bank Corp. account or trade
6 lines as Advanta Credit Cards instead of
7 CardWorks; right?

8 A. Right.

9 Q. Now, let me ask you -- and again, this
10 isn't your department, but I'm assuming that
11 everything that you're aware of that was done in
12 this instance was consistent with Experian's
13 normal policies and procedures. Am I correct in
14 my assumption as far as you know?

15 A. Yeah. As far as I know, I would say
16 that we were -- we were doing everything we could
17 to address the client's need. So, yes, I think we
18 were trying to follow policy and procedure.

19 Q. The client being CardWorks?

20 A. Right.

21 Q. Now, I continue down the email chain.
22 Now I'm looking at 144, an email from you to
23 CardWorks.

24 A. Yeah.

25 Q. "Still working on my follow-up. Today

1 your other subcodes show as Spiegel/CWF..." Do
2 you see that?

3 A. Yep.

4 Q. What does that mean?

5 A. I assume Spiegel is a client that they
6 service for and the CWS represents CardWorks
7 Servicing. So it's sort of a shared, like, naming
8 on the subcode.

9 Q. And it says that's what shows up to
10 consumers and creditors. You mean Spiegel
11 accounts that CardWorks services report to
12 consumers, credit reports and to creditor or
13 credit reports as Spiegel/CWS?

14 A. Correct, at that time. I mean, I don't
15 know what it is today. But per that email, yes,
16 that's what it was.

17 Q. And so you were asking CardWorks if they
18 wanted to also add CWS to the trade line when
19 Experian reported to them as Advanta credit cards;
20 right?

21 A. Correct.

22 Q. Now I'm at 179.

23 A. Okay.

24 Q. And I have your email that I'm looking
25 at --

1 A. Sure.

2 Q. -- the second paragraph, and it says, "I
3 have submitted a request to have the name changed
4 to Advanta Credit Cards."

5 A. Right.

6 Q. Right. And so what you're saying is you
7 had submitted to the Experian department
8 responsible to make those decisions or those
9 changes the request from CardWorks that it report
10 this portfolio as Advanta credit cards on consumer
11 and credit -- trade line credit reports?

12 A. Yes.

13 Q. By the way, who would you have submitted
14 that request to?

15 A. Sales support, not Kathy Cosier's group,
16 sort of the group that Zoe is in.

17 Q. Okay. And why would that request have
18 gone to sales support instead of to Kathy's
19 department?

20 A. Because that's the area that makes
21 adjustments to the subcodes as far as that
22 particular type of request, like how a name
23 appears.

24 Q. Who -- I mean, didn't you have to -- if
25 you're following Experian's procedures, didn't you

1 have to receive approval to report the CardWorks
2 accounts as Advanta Credit Cards the way that you
3 would have Bank of America to Chase?

4 A. So the sales support group actually
5 would be the ones to call us on that and say hey,
6 you can't do that. So they kind of -- like a
7 check and balance kind of thing.

8 Q. One second.

9 A. No problem.

10 MR. CLARK: Do you think now would be
11 good to take maybe a ten-minute break?

12 MR. BENNETT: If you want to. I mean,
13 I'm not going to -- you know, we don't have a lot.

14 MR. CLARK: Mr. Kilka, how do you feel?
15 Would you like a brief break?

16 THE WITNESS: I'm fine, Joe.

17 THE VIDEOGRAPHER: It would be a good
18 time to switch tapes. We have 14 minutes left on
19 our videotape.

20 MR. BENNETT: Yeah. That's fine. I
21 probably have 30 minutes total.

22 THE VIDEOGRAPHER: Is it okay to go off
23 the record?

24 MR. BENNETT: Sure. Joe, do you need a
25 break?

1 THE VIDEOGRAPHER: The time is now --

2 MR. CLARK: I'm going to go use the rest
3 room and get some water.

4 MR. BENNETT: All right. I'll be in the
5 room. I'll have the phone on, but it will be
6 muted.

7 THE VIDEOGRAPHER: The time is 3:26 p.m.
8 Eastern Standard and we are now off the record.

9 (There was a recess in the proceedings.)

10 THE VIDEOGRAPHER: The time is now
11 3:36 p.m., and this is the start of the second
12 tape in the deposition of James Kilka, and we are
13 now back on the record.

14 BY MR. BENNETT:

15 Q. All right, James. We were -- the
16 videographer is on the edge of his seat of
17 excitement as we plow our way through these email
18 chains. I'm now moving up to 198. And we can --

19 A. Almost there. Hang on. Okay. I'm
20 there.

21 Q. All right. On 198, and if you could
22 take a look this email chain and look at your
23 email in the middle, the October 27, 2010 at 3:06,
24 can you tell me what this exchange was about and
25 what you were communicating?

1 A. Yeah. Give me one second. Len, are you
2 asking me about just this one piece or the whole
3 string?

4 Q. Well, I guess the whole string, but
5 mainly this piece. Actually let me step back and
6 ask you this: To this point in these emails as
7 we've gone through them, there really were several
8 different needs that CardWorks had expressed it
9 seems. The initial emails discuss CardWorks'
10 desire to be able to pull Bulls Eyes, and they
11 were asking how do we get permission to pull Bulls
12 Eyes on Advanta's subscriber code; right? That
13 was the initial topic; correct?

14 A. Yes.

15 Q. And then at a later time it seems as if
16 they were attempting to take Advanta's existing
17 subscriber code, but change how the data in the
18 Advanta subscriber code trade lines would display.
19 Am I also understanding you correctly? And then
20 I'll follow up before you say yes or no.

21 Now, in this stage, the discussion is focused
22 on the need for entirely new subscriber codes for
23 CardWorks. And if you can let me know if I'm off
24 track or on track.

25 A. That is sort of the path it went down.

1 I don't know if -- looking at these emails, I
2 don't know if we're all the way there yet, but, I
3 mean, the first one in the string is where I
4 created them a new subcode. And then -- hold on
5 one second here. Let me just read this, too.

6 Then they started questioning me about
7 whether there was already an existing subcode they
8 could use and just have their name put -- laid
9 over top o f it or that they could have it put
10 under them rather, like put under their company
11 ID, and I was telling them that's not possible.

12 Q. Okay. And if you want to skip to 202,
13 which is the --

14 A. Okay.

15 Q. -- the continuation of that chain but
16 with the later emails. And on 202 you have your
17 email to Gina that says, "The subcode you provided
18 is still under Advanta's company ID."

19 Can you tell me -- I'm now asking you, James,
20 why is that significant?

21 A. Because we -- essentially the company
22 ID -- well, I'll try to think of the best way to
23 answer this, Len. The subcodes are -- they reside
24 under the company IDs, and why this was so
25 important is because we can't move a subcode from

1 one company ID to another where it changes the --
2 like the owner of the subcode. If you were to do
3 that, you'd actually change the history. And so
4 that's why we didn't want to -- we couldn't move a
5 subcode like that. Does that make sense? Does
6 that answer your question?

7 Q. It does. And then I'm now at the top of
8 202. It says, "James, we want the subscriber code
9 to remain in the Advanta company ID. CardWorks
10 does not own the accounts, they're owned by
11 Advanta trust." Do you see that?

12 A. Yes.

13 Q. Have you inspected or had an opportunity
14 to review the original Advanta subscriber
15 agreement?

16 A. No.

17 Q. But if there's an Advanta company ID,
18 that would have been assigned to the customer in
19 the -- in a specific subscriber agreement; right?

20 A. Yeah. The company ID is more of an
21 internal number, but they might not know it. They
22 probably wouldn't know what their company ID is,
23 but essentially -- they wouldn't know what it is.
24 We don't cross --

25 Q. Now I'm at 207.

1 A. Okay.

2 Q. All right. And so 208, you've now been
3 told for the first time, I think at least in these
4 emails, that CardWorks does not own the accounts.
5 They are owned by an Advanta trust. Do you see
6 that?

7 A. Yes, I do.

8 Q. All right. And then you -- in the email
9 above that, you were responding; correct?

10 A. The email above it, yes.

11 Q. You say, are these trade lines still
12 going to be updated by someone on an ongoing
13 basis? Is the Advanta Trust going to be the one
14 to handle the reporting. You asked those
15 questions; right?

16 A. Right.

17 Q. Why are those questions relevant or
18 important? Why were you asking them?

19 A. I wasn't sure if they were closed
20 accounts and it was just -- they were going to be,
21 like, handling just the disputes because they
22 asked about Bulls Eye only originally. So I
23 think I'm trying -- obviously this is two years
24 ago, right? So I'm telling you where I think my
25 mind was.

1 And then as far as who is going to be
2 reporting them, I was trying to get a sense of the
3 full scope of the relationship so I could report
4 it back to, you know, like the membership area and
5 the data reporting folks. Most of the time I have
6 to get this information and bring it back, and
7 then I can come back with what the next steps are.

8 Q. Okay. And continuing, and now I'm back
9 up on 207, you have an email November 1, 2010. Do
10 you see that?

11 A. Yeah.

12 Q. And can you read that for me?

13 A. Yeah. "Gina, I'm engaged with
14 membership area trying to ensure that you guys get
15 the access to the accounts that you need to and
16 one question that came up is who is the current
17 owner of the Advanta accounts? You mentioned a
18 'Trust'...do we have a contact at whomever that
19 truly is? James."

20 Q. And then they told you it was -- the
21 owner of the Advanta account is Vion Holdings II
22 LLC; correct?

23 A. Yes.

24 Q. And would you have provided that
25 information to the membership or the necessary

1 departments at Experian?

2 A. Yes.

3 Q. Now I'm at 213, five or six pages deep.

4 A. Yep. I'm there.

5 Q. After you were told that this is -- the
6 owner of the Advanta accounts is now Vion
7 Holdings, you said, can you have Brian sign the
8 agent agreement and have Vion Holdings sign the
9 open area for client; correct?

10 A. Yes.

11 Q. By the way, I've seen that document
12 again. I don't know that it's in this stack here,
13 but -- it's not in this stack. But can you tell
14 me what that email was about and what that
15 agreement was?

16 A. Sure. For CardWorks Servicing to handle
17 those disputes on behalf of Vion Holdings who
18 owned the accounts, we would have had to have made
19 CardWorks an agent of the client. In this case,
20 Vion Holdings would be the client, and CardWorks
21 Servicing would have been considered the agent.

22 Q. And under that relationship, who would
23 Experian have considered the source of the credit
24 reporting information?

25 A. I'm not sure I can answer that. I'm

1 not -- can you try asking it a different way?

2 Q. Well, this agreement -- ultimately there
3 was such a signed agreement with Vion Holdings
4 signing the contract with Experian as client and
5 CardWorks as agent; right?

6 A. Yeah, one that was never countersigned
7 by Experian.

8 Q. Okay. Is there a subscriber agreement
9 under which CardWorks is making credit reporting
10 of these accounts, the ones that had been serviced
11 by Advanta Bank Corp.?

12 A. Not that I'm aware of. Not that I'm
13 aware of.

14 Q. So they're operating without any
15 subscriber agreement at all or without one signed
16 by Experian?

17 A. I can only tell you what I know, and I'm
18 not aware of any agreement being there.

19 Q. Well, other than this -- these exchanges
20 here and this -- well, first of all, why was it
21 never countersigned by Experian?

22 A. We didn't approve the red lines.
23 Essentially it came back to us. Brian returned it
24 to us with red lines from Vion Holdings' outside
25 counsel, and they were not things that we were

1 prepared to agree to. And so it led to contract
2 negotiations.

3 Q. Okay. In this email and the agreement
4 that had been proposed or forwarded by you for
5 Experian, Vion Holdings was to be identified or
6 was identified to Experian as the client, as the
7 owner of the accounts; right?

8 A. Correct.

9 Q. And CWS or CardWorks Servicing was the
10 agent of the accounts; right?

11 A. Correct.

12 Q. And what was CardWorks Servicing's role
13 in this three-party relationship that was to be
14 created with Experian, Vion and CardWorks?

15 A. I can tell you what I -- how I -- what I
16 understood their role to be.

17 Q. Okay. I'll take that.

18 A. So they were going to be managing any
19 payments coming in for these cards, that they
20 would be handling any disputes that came in for
21 those cards and any -- any other request from the
22 consumer, like around address changes or, you
23 know, essentially servicing the accounts on their
24 behalf, on behalf of Vion.

25 Q. Okay. And has -- to your knowledge, has

1 Vion Holdings ever provided or made any credit
2 reporting to Experian for these accounts, Vion
3 itself?

4 A. I wouldn't know the answer to that.
5 Vion is not --

6 Q. Under the terms of this agreement, what
7 I'm calling the three-party agreement, the agent,
8 client and Experian agreement, Vion Holdings was
9 not going to be the entity that was making the
10 credit reporting to Experian though, right, under
11 that agreement?

12 A. Again, this is my opinion -- how I
13 understood it. I would have assumed that data
14 reporting would have come from CardWorks.

15 Q. Now, left out of this discussion is
16 Advanta. Are you aware of any contract with
17 Experian, either countersigned or not
18 countersigned, that remains in effect with Advanta
19 Bank or any credit reporting source named Advanta?

20 A. Advanta wasn't an account that I
21 supported, so I wouldn't have access to any of
22 their account information or contracts. So I
23 can't -- I couldn't answer that for you.

24 Q. Okay. All right. I'm skipping now to
25 256.

1 A. Okay.

2 MR. KATZ: I'm sorry, Len.

3 BY MR. BENNETT:

4 Q. It says, James, here is the signed
5 letter from both Vion and CWS.

6 MR. KATZ: Len, I'm sorry. I got to get
7 it. Mr. Kilka was ahead of me. 256?

8 MR. BENNETT: Yes.

9 MR. KATZ: Sorry about that. Go ahead,
10 Len.

11 BY MR. BENNETT:

12 Q. It's not attached in this exhibit we
13 sent you, but when it says signed a letter, that
14 would actually be subscriber agreement, the
15 client, agent subscriber agreement that Vion had
16 marked up; right?

17 A. Len, I couldn't be sure based on
18 description of the attachment.

19 Q. That's fair. Take a look at 249.

20 A. Okay.

21 Q. And continuing the email, now this email
22 chain on the next page, 250, has the conveyance
23 email where James, here is the signed letter.
24 Above it you say, I submitted the form. Thanks
25 for the help. And then on 249, in the middle is

1 your email to Brian. "Brian, I sent the agreement
2 that you sent back to me to our membership area
3 without looking at it. I did not realize that
4 Vion crossed out information and changed text. We
5 cannot accept the changes without our contracts
6 area vetting the requested changes."

7 Do you see that?

8 A. Yes, I do.

9 Q. All right. And this is what you just
10 were referring to in terms of why there is not an
11 official countersigned document; right?

12 A. Exactly.

13 Q. And then 252.

14 A. Okay.

15 Q. Again, this is regarding the feedback,
16 the middle part of that page, the email from you
17 at 11:09 a.m., this is the feedback you received
18 from your contracts department; right?

19 A. I'm reading it right now. Yeah, it is.

20 Q. Now, I'm trying to -- I admit your
21 challenge of not having the document in front of
22 you, the full document in front of you, but I want
23 to the start with paragraph one. The question you
24 asked was, Will clients affiliate be the party
25 solely providing these services? And then you say

1 something similar in that same email bracketed in
2 italics, "In the first question, is CardWorks is
3 the only affiliate that will work this portfolio
4 or will there be other businesses?"

5 Do you see that? Do you know what you would
6 have meant by that?

7 A. Give me one second, Len, to look at it.
8 Then I'll respond.

9 I couldn't say definitively what I was
10 driving at there. I may have been asking if there
11 was going to be other situations like this where
12 there would be other businesses like CardWorks
13 participating in other portfolios. But I'm kind
14 of saying this portfolio. So, no, I couldn't say
15 definitely without having the agreement or --
16 and/or the attorney that I worked with, you know.
17 Essentially I was regurgitating what the attorney
18 had given me as feedback, so...

19 Q. Okay. Who was that attorney?

20 A. Michael Cordova from our contracts
21 group.

22 Q. That's it for your emails.

23 A. Okay.

24 Q. You've broken the case wide open after
25 that exchange. Sarcasm. Now I'm going to take a

1 look at the other six emails. If you take a look
2 at what's Exhibit 3.

3 A. Okay.

4 Q. These are excerpts of my client's
5 Experian credit disclosures that show Advanta, and
6 I picked three because it shows two Advanta trade
7 lines.

8 A. Are you looking at page 4 of 24 when you
9 or is there --

10 Q. I'm looking at 3, 3 of 24.

11 A. Okay.

12 Q. By the way, I know this is not your
13 department.

14 A. Right.

15 Q. But you're able to read an Experian
16 credit disclosure; right?

17 A. Yeah. It looks a lot different than the
18 reports I'm used to looking at because I'm used to
19 the client facing ones, but I should be able to
20 make my way through this.

21 Q. Now, in this instance, I will tell you,
22 no one will argue that these are different
23 accounts, but there's two trade lines showing, and
24 both of them showing the same recent balance, date
25 opened and, you know, status dates off by a month.

1 But the top says Advanta Bank. It has a
2 Springhouse, Pennsylvania address. And the bottom
3 says Advanta Credit Cards and has CardWorks,
4 Bethpage, New York, PO Box.

5 Do you have any idea why there would be two
6 trade lines reported?

7 A. I'm looking. I'm not ignoring you.

8 Q. No, no. I understand. While you're
9 looking, the next question I'm going to ask you is
10 and then you can answer it first is: Are you
11 familiar with the address that is listed under the
12 Advanta Bank? Do you know whose PO Box that had
13 been?

14 A. I don't recognize that address for the
15 Advanta Bank, and I really couldn't say looking at
16 this why that's appearing twice. It seems like
17 it's almost the same trade with very slight
18 variation, but I can't -- I couldn't say.

19 Q. Okay. I don't have any other questions
20 for you, James. I appreciate your courtesy.
21 Sorry about you having to wait on me.

22 A. No problem. Thanks.

23 MR. KATZ: Give me one second. Sorry
24 guys.

25 MR. CLARK: Ethan, are you still on the

1 line?

2 MR. OSTROFF: I am.

3 MR. CLARK: Ethan, do you have any
4 questions for Mr. Kilka?

5 MR. OSTROFF: Not today, no.

6 EXAMINATION

7 BY MR. KATZ:

8 Q. I just have one. In your four years as
9 an account executive, how many times have you,
10 prior to this, had you dealt with accounts --
11 transferring accounts following an FDIC takeover
12 of a bank?

13 A. Never.

14 MR. KATZ: That's it for me, too.

15 MR. BENNETT: I have one other
16 follow-up. Another hour.

17 RE-EXAMINATION

18 BY MR. BENNETT:

19 Q. In responding to that question from Ben,
20 roughly, if you know, how many times have you
21 worked with one of Experian's customers when a
22 credit card portfolio was sold from one entity to
23 an entirely different entity?

24 A. I couldn't give you a firm number. But
25 I would say it may happen a couple times a year

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1 tops.

2 MR. BENNETT: All right. I don't have
3 any other questions.

4 MR. KATZ: Thanks, all.

5 THE VIDEOGRAPHER: The time is now
6 4:01 p.m., and this concludes the deposition of
7 James Kilka, and we are now off the record.

8 MR. BENNETT: It's standard buy
9 everything. So we don't need anything expedited.
10 I'm not sure if Joe is going to suggest or Ben
11 going to suggest is that their client read and
12 review. We have a stipulation that was in place
13 with CardWorks, I hope that Experian would honor
14 as well, if the witness wants to read and review,
15 then that time period starts when the court
16 reporter delivers a copy of the transcript to
17 Experian's lawyer so you don't have to track down
18 James yourself. And Experian I'm assuming is
19 buying a copy, is that right? We'll buy the
20 original.

21 MR. CLARK: We'll buy a copy, and our
22 client will read and review.

23 MR. BENNETT: We'll buy an original, a
24 mini and a PDF and then, of course, the video as
25 well. We'd like them synced. We're going to play

1 this as the core part of the jury trial, and
2 everybody starts to cry.

3 MR. CLARK: We will order a copy of the
4 video as well. We'd like to have it synced, and I
5 don't think we'll need a mini.

6 Ben, do you think we should get an original
7 and mini.

8 MR. KATZ: I'm fine with just an
9 original.

10 MR. CLARK: That's what we'll do.

11 MR. OSTROFF: Ethan Ostroff, can I just
12 get a copy, one copy condensed version.

13 (Whereupon, at 4:03 p.m., the taking of
14 the instant deposition ceased.)

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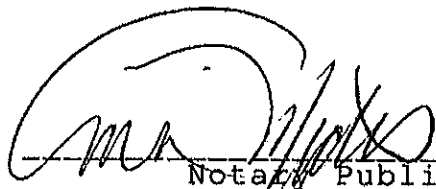
1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE
2 COUNTY OF ALLEGHENY) SS:

3 I, Ann Medis, RPR, a Court Reporter and
4 Notary Public in and for the Commonwealth of
5 Pennsylvania, hereby certify the witness, JAMES
6 KILKA, was by me first duly sworn to testify to
7 the truth; the foregoing deposition was taken at
8 the time and place stated herein; and the said
9 deposition was recorded stenographically by me and
10 then reduced to printing under my direction, and
11 constitutes a true record of the testimony given
12 by said witness.

13 I certify the inspection, reading and signing
14 of said deposition were NOT waived by counsel for
15 the respective parties and by the witness.

16 I certify I am not a relative or employee of
17 any of the parties, or a relative or employee of
18 either counsel, and I am in no way interested
19 directly or indirectly in this action.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand and affixed my seal of office this 6th day of
22 September, 2012.

23
24 
25 Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Ann Medis, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Jan. 7, 2013
Member, Pennsylvania Association of Notaries

1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
 2 COUNTY OF ALLEGHENY) S H E E T
 3

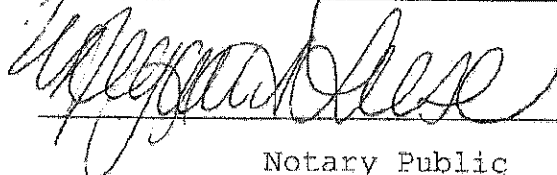
4 I, JAMES KILKA, have read the foregoing pages of
 5 my deposition given on August 24, 2012, and wish
 6 to make the following, if any, amendments,
 7 additions, deletions or corrections:
 8

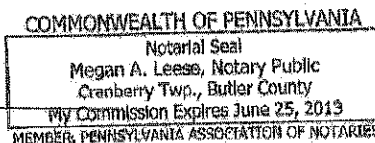
9	Page	Line	Change and reason for change:
10	49	5	"Vion is not" should read "Vionn is
11			not my Client" Reason: Either I was
12			cut off or the reporter misheard my
13			answer."
14			
15			

16 In all other respects, the transcript is
 17 true and correct.
 18

19 
 20 JAMES KILKA

21
 22 3rd day of October, 2012.

23 
 24
 25 Notary Public



<p>A</p> <p>ABC 26:17,18 32:11 35:5</p> <p>ABC's 26:23 27:14</p> <p>able 7:2 14:18 41:10 53:15,19</p> <p>accept 51:5</p> <p>access 22:23 26:23 27:13 45:15 49:21</p> <p>account 7:14 36:5 45:21 49:20,22 55:9</p> <p>accounts 8:7 13:5 19:14,15 23:20 28:24 28:25 31:24 32:8,12 33:6,21 35:6 37:11 39:2 43:10 44:4,20 45:15,17 46:6,18 47:10 48:7,10,23 49:2 53:23 55:10,11</p> <p>ACDs 16:5,6</p> <p>acquired 32:12 34:1</p> <p>act 18:16 23:17,19</p> <p>action 58:19</p> <p>actual 6:20 16:7,12</p> <p>add 37:18</p> <p>addendum 23:10,15</p> <p>addition 22:21</p> <p>additional 9:9 26:25</p> <p>additions 59:7</p> <p>address 36:17 48:22 54:2,11,14</p> <p>adjustments 38:21</p> <p>admit 51:20</p> <p>Advanta 18:3 19:2,3,3 19:24 21:3,6 22:25 26:18,21 27:11,12,16 27:20 28:25 29:3 35:4,13,14 36:1,5,6 37:19 38:4,10 39:2 41:18 43:9,11,14,17 44:5,13 45:17,21 46:6 47:11 49:16,18,19,20 53:5,6 54:1,3,12,15</p> <p>Advanta's 41:12,16 42:18</p> <p>affiliate 51:24 52:3</p> <p>affixed 58:21</p> <p>afternoon 5:5</p> 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